was amended in 1937, the assessors who were to sit with the Court of a Kathi or Assistant Kathi had, as far as relevant, rights, duties, and powers given by Chapters XIII and XIV of the Criminal Procedure Code to assessors of the High Court; the learned Judge was of the opinion that had these pre-1937 provisions been still in force when the Courts Ordinance, 1948, came into force, they would have been impliedly repealed because the conception of assessors whose opinions could control the verdict of a Magistrate's Court was repugnant to the scheme of Part VII of the Courts Ordinance, 1948; under sub-section (5) of section 28 of the said Enactment (as it now stands) the function of assessors sitting with the Court of a Kathi or Assistant Kathi is to advise the Court in matters connected with Mohammedan Law; although such assessors have no power to control the verdict of the Court, the learned appeal Judge was of opinion that the provisions dealing with assessors in section 28 were impliedly repealed.

On the hearing of this reference, Mr. Brodie for the Public Prosecutor submitted that the is a presumption against repeal by implication. "Repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presumption that the Legislature did not intend to keep really contradictory Enactments in the Statute Book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted, unless it is inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention." (*Maxwell* on *Interpretation of Statutes*, 9th. Ed. p. 173).

There is nothing in the provisions of section 28 of Enactment No. 109 (Sheraiah Courts) of Kedah which is inconsistent with or repugnant to the scheme of Courts established by the Courts Ordinance, 1948. On the contrary, the Legislature in repealing the various written laws relating to Courts has expressed a clear intention to keep such and similar provisions in force by excluding from the extent of the repeal "the provision relating to the Courts of Kathis and Assistant Kathis and appeals therefrom." Part VII of the Courts Ordinance, 1948, which establishes Magistrates' Courts without assessors did not introduce a new principle; this was also the situation in the case of Courts of Magistrates established under Enactment No. 25 (Courts) of Kedah.

Apart from the absence of any inconsistency or repugnancy between the provisions of section 28 of Enactment No. 109 (Sheraiah Courts) of Kedah and the Courts Ordinance, 1948, there is a strong presumption against the implied repeal of the said section 28 because of the provisions of Clauses 5 and 100 of the Federation of Malaya Agreement, 1948. Clause 5 provides that "except as provided in Clauses 100 and 101 of this Agreement, nothing in this Agreement (including the Schedules thereto) shall apply in any Malay States to matters relating to the Muslim Religion or the Customs of the Malays"; by virtue of Clause 100 the power to legislate on matters relating to the Muslim Religion and Customs of the Malays is vested in the Legislative Council of the Malay States. The said Enactment of Kedah deals with matters and with certain offences of a religious nature; section 2 thereof makes all persons professing the Mohammedan religion subject to that Enactment, and under section 28(5) the functions of assessors sitting with the Court in the trial of offences is limited to advise the Court in matters connected with Mohammedan Law. Subject to the provisions of Clause 66 of the Federation of Malaya Agreement, 1948, the validity of any law passed by the Legislative Council of the Federation of Malaya affecting or purporting to affect the Muslim Religion or the Customs of the Malays would be questionable.

For the above reasons we determine that section 28 of Enactment No. 109 (Sheraiah Courts) of Kedah, so far as it relates to assessors, is still in force.

Reference answered.

YAP KIM CHYE & ANOR.
v.
SEOW SENG CHOON.

[Orig. Civ. Juris. (Knight, J.) July 14, 1952]
[Singapore — Suit No. 616 of 1951]

Damages — General and special damages for the benefit of deceased's wife and children — Negligence — Stationary trishaw — Vehicle running into.

This was a claim based on the principle of res ipsa loquitur. The driver of a lorry belonging to the defendant was on the night of September 27, 1950 driving it along Victoria Street towards the Happy World when suddenly a figure ran in front of his vehicle from the right hand side. The driver immediately braked and swerved to the left — but not in time to avoid the pedestrian who was struck and knocked down. Thereafter the vehicle swerved to the left and ran into the back of a stationary trishaw in which the deceased was sitting near the pavement. The trishaw was carried a considerable distance by the violence of the impact and the deceased received multiple injuries from which he subsequently died.

It was not denied that the defendant's driver was acting within the scope of his employment at the time of the accident. The only issue was whether the accident was in fact occasioned by the driver's negligence and if so, to what damages, the plaintiffs were entitled.

Held, that on the evidence the driver's negligence is manifest and on this issue the plaintiffs must succeed.

ACTION FOR DAMAGES.

Chong Thutt Pitt for the plaintiffs.

L. A. J. Smith for the defendant.

Knight, J. : — In this suit the Administratrices of the estate of the late Lee Chee Hong (deceased) seek $41,880 as general and special damages for the benefit of the deceased's wife and two infant children whose combined loss and damage following his death is estimated at this figure.

It is not disputed that the deceased died as a result of injuries received when he was struck by the defendant's lorry on 27th September, 1950, and the only two issues before the Court — it not being questioned that the defendant's driver was acting within the scope of his employment at the time of the accident — is whether the accident *was* in fact occasioned by the driver's negligence and if so, to what damages, the plaintiffs are entitled.

To deal firstly with the question of negligence it is said by the driver that on the night in question he was driving a large empty lorry down Victoria Street in the direction of the Happy World at about 9.30 p.m. when suddenly a figure ran in front of his vehicle from the right hand side. He immediately braked and swerved to the left — but was not in time to avoid the pedestrian who was struck and knocked down by the right hand side of the lorry. Thereafter the vehicle swerved to the left and ran into the back of a stationary trishaw in which the deceased was sitting near the pavement. The trishaw was carried a considerable distance by the violence of the impact and the deceased received multiple injuries from which he subsequently died.

Counsel for the defendant submits that in the circumstances the driver has been guilty of no negligence. Admittedly, he says, he owed a duty of care to the pedestrian but he discharged that by swerving to avoid him. What happened thereafter, says Counsel, was certainly no fault of his as the driver never saw the trishaw and would not have driven his vehicle onto the side of the road and thus collided with it unless he had been forced to do so by the presence in the centre of the road of the pedestrian. In short it was only the "agony" of the first collision which caused the driver to swerve; that he acted as any reasonable man would have done and that the ensuing accident was both inevitable and unforeseeable.

I cannot accept this contention. The driver himself said that the speed of his vehicle just prior to the first collision was 18/20 m.p.h. His brakes, he said, were reasonably efficient — but his lights were not as they showed up the road to a distance of only six feet in front of the vehicle. He himself admits that at a speed of 18/20 m.p.h. the lorry would require about 25 feet in which to pull up and it is thus clear that in any emergency he could not have stopped within a distance of nearly 20 feet beyond his line of vision. The matter, however, does not end there as we only have the driver's word that he was travelling at a mere 18/20 m.p.h. The trishaw rider says the lorry was going "very fast" and the fruitseller whom it passed after *two* collisions says it was going "fairly fast." Frankly I should be inclined to put its speed prior to the first collision at more than 20 m.p.h. — particularly when it is remembered that a driver, in these circumstances, is highly unlikely to overestimate the vehicle's speed.

We thus reach the position that on this dark night and with inefficent lighting this lorry was proceeding down the street at a speed probably well in excess of 20 m.p.h. The driver says that he braked before the first impact and from that point to the place where he struck the deceased is a matter of 28 feet. On his own admission he could clearly have stopped before reaching the point where the trishaw was standing and obviously he should so have stopped within this distance, bearing in mind that he had already had one collision and was nearing the side of the road where any person or vehicle might be hidden from his view which he knew to extend to a mere six feet ahead of him. To my mind the driver's negligence is manifest and on this issue the plaintiffs must succeed.

The question of general damages presents little difficulty as I have no doubt that the market value of the three business concerns amounts to considerably more than would be the cost of an annuity to give a return of $290 monthly for a period of eleven years. The deceased, however, was conscious for nearly three days before his death and his estate is entitled to damages for the pain and suffering he underwent during this period. A further sum should be granted in respect of his loss of expectation of life.

Both these amounts must be assessed arbitrarily — and for pain and suffering I would award $2,000 plus $4,000 for loss of expectation of life. To these sums,

of course, must be added the special damages claimed, i.e., $1,800.

There will thus be judgment for the plaintiffs for $7,800. I shall hear Counsel as to costs.

After hearing argument I direct that plaintiffs receive two-thirds of their taxed costs.

As to damages, stay of execution for 14 days — if notice of appeal filed within that period — stay until hearing of appeal.

Order accordingly.

S. R. M. RAMAN CHETTIAR
v.
SOH BEK NEO & ANOR.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore), and Wilson, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 22 of 1952]

Debtor and Creditor (Occupation Period) Ordinance 1948 — Notice required under s. 11(3) of the Ordinance — Whether notice is a necessary preliminary to action.

This was an appeal from the decision of the learned trial Judge who had dismissed the plaintiff-appellant's claim on the ground that the notice given under section 11(3) of the Debtor and Creditor (Occupation Period) Ordinance was invalid.

Held, (1) that where there was a dispute or difference between the parties recourse may be had to the High Court by Originating Motion or Summons without notice and in such a case no notice under section 11(3) of the Ordinance would be required; (2) that although the notice in this case was defective the respondents had by not raising any objection for two years during which time many active steps were taken in the litigation waived any right to object.

COURT OF APPEAL, appeal from the decision of Abbott, J., reported at p. 92 *ante*.

H. B. Ball for the appellant.

C. S. Jayaswal for the respondents.

Mathew, C.J., (F.M.) : — This appeal concerns a claim for re-instatement under section 11 of the Debtor and Creditor (Occupation Period) Ordinance, 1948. The claim was dismissed by the learned trial judge on the ground that the notice given under section 11(3) of the Ordinance was invalid. It was held that a notice to re-instate within one month was not in accordance with the express terms of section 11(3) which provides for a notice in writing within not less than one month I agree with the learned trial judge that the notice was defective. It is a matter for consideration whether the plaintiff's failure to serve a valid notice on the defendant entitled the defendants to judgment. In the special circumstances of the case I do not think it did. The notice to re-instate was sent to the defendant on the 7th October, 1949. The record does not disclose that any reply was sent to the plaintiff, and on 31st December, 1949, the plaintiff took out an originating summons. In January 1950 the defendants filed affidavits and denied liability. The point of the notice being invalid was not taken, and the matter went to trial. On appeal a re-trial was ordered, and at the opening of the re-trial on the 9th November, 1951, the point of an invalid notice was taken for the first time. In my view, the conduct of the defendants between the 7th October, 1949 and the 9th November, 1951 must be regarded as a waiver of the irregularity in the notice. They had joined issue on the merits of the case, and it was not competent for them at this late stage to rely on the defective notice as a defence. On this ground I would allow the appeal.

Whether a notice under section 11(3) is always a necessary preliminary to applying to the High Court by way of originating motion or summons for re-instatement requires consideration. Sub-section (1) creates a right, and sub-section (5) lays down the manner in which the creditor or the debtor or any interested party may apply to the Court for relief. It is clear from paragraph (c) that where any difference or dispute arises, recourse may be had to the High Court by originating motion or summons without any notice. If, for example, a letter were written demanding re-instatement, and a reply was received denying liability, no notice under sub-section (3) would be required, as a dispute or difference had arisen. Once a a dispute or difference has occurred, action can be taken. It was not, I think, the intention of the legislature that the rights conferred under sub-section (1) should be defeated by a technical defect in a notice given under sub-section (3). The purpose of the sub-section is to give a party reasonable time of not less than a month to comply with a request for re-instatement, and so avoid litigation.

I would allow the appeal with costs and order that judgment for the relief prayed be entered for the appellant with costs. The deposit in Court will be paid out to the appellant.

Sir Charles Murray-Aynsley, C.J., (Singapore) : — These proceedings arose out of a claim for reinstatement under section 11 of the Debtor and Creditor (Occupation Period) Ordinance, 1948. The proceedings had been protracted. On the 7th October, 1949 the appellant issued what purported to be a notice